

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application for parcel NM 649.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

Under regulations in effect prior to Feb. 26, 1982, information concerning agency in cases where application for oil and gas leases was made by one other than the applicant was permitted to be placed on file with a single Bureau of Land Management Office which would then issue a serial number allowing incorporation by reference of the information on other applications made to other BLM state offices.

APPEARANCES: Don M. Fedric, Esq., Roswell, New Mexico, for appellant; Jeffrey M. Lee, Esq., Malibu, California, for Dandridge Sproul, Trustee; Robert J. Uram, Esq., Office of the Solicitor, Southwest Region, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Appellant Bernard M. Holliday was the number two drawee for parcel NM 649 in the November 16, 1981, New Mexico simultaneous oil and gas lease drawing. On May 1, 1982, the New Mexico State Office of the Bureau of Land Management (BLM), issued oil and gas lease NM 51014 to the first drawee, Dandridge Sproul, trustee. Earlier, on April 22, 1982, BLM had notified appellant of the rejection of his offer. From the decision rejecting his offer, this appeal is taken.

Appellant attacks the regularity of the Sproul application, claiming it should be rejected and the lease issued to Sproul canceled, for the reason that Sproul failed to comply with 43 CFR 3102.2-6 (1981), requiring

notice to BLM of agency arrangements made by Sproul for assistance with oil and gas lease applications to BLM. Although the regulations were amended in 1982 to eliminate the requirements of Subpart 3102.2-6, this Board has taken the position that since the rights of subsequent drawees are involved, it is not proper to apply the amended regulation prior to its effective date on February 26, 1982. See Arthur H. Kuether, 65 IBLA 184, 186 n.4 (1982).

The regulation in force at the time of the drawing for parcel NM 649, 43 CFR 3102.2-6 (1981), provides:

(a) Any applicant receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the lease offer, or the lease application if leasing is in accordance with Subpart 3112 of this title, a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: A power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement.

(b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers, or applications if leasing is in accordance with Subpart 3112 of this title.

Thus, at the time the lease applications for parcel NM 649 were received by BLM, Departmental regulations required disclosure by each applicant of the nature of assistance received from others in making an application for lease.

The record on appeal indicates that Sproul's application appears to be fully completed and bears the notation, concerning qualifications statements, under the section permitting identification of "serial records"; "TRUSTEE: CA 3000; AGENT: CA 3000." This entry is an incorporation by reference, permitted by 43 CFR 3102.2-1(c) (1981), of a qualifications statement filed in another state, (in this instance, in California). The regulation, 43 CFR 3102.2-1(c) (1981), provides in pertinent part:

(c) Filing statements for reference. A statement of the qualifications of a trust or guardianship (§ 3102.2-3), association (§ 3102.2-4), corporation (§ 3102.2-5), agent, if the duration of the authority to act is less than 2 years and is specifically set out (§ 3102.2-6) or municipality (§ 3102.2-9)

may be placed on file with a Bureau of Land Management office described in § 1821.2-1 of this title. The office receiving the statement shall indicate its acceptance of the qualifications by assigning a serial number to the statement. Reference to this serial number may be made to any Bureau of Land Management office in lieu of resubmitting the statement. Such a reference shall constitute certification that the statement complies with paragraph (b) of this section.

It is not denied that the correct and complete disclosures required by regulation were made in California, nor that the certification by the California State Office of serial number 3000 was correct. The record affirmatively shows the necessary filings were made in California. Appellant contends, however, that the use of the California serial number in the New Mexico drawing was improper. He contends also that a statement subsequent to the November drawing furnished to BLM by Sproul in answer to a questionnaire which erroneously stated Sproul had not filed the necessary statements should be dispositive of the issue whether there was a sufficient disclosure of agency.

Both appellant's contentions are without merit. As this Board observed in Arthur H. Kuether, supra at 65 IBLA 187, 188, there were alternative methods of compliance with the Departmental regulation requiring disclosure of an agency relationship in applications of the sort made by the parties here. In this case, appellant chose to disclose the agency relationship by reference to a serial number issued him by the BLM California State Office after submission to that office of the necessary documents. The intent of the regulation to permit this practice, even outside the state of certification, is clear on its face. See R. Hugo C. Cotter, 58 IBLA 145, 149, 88 I.D. 870, 873 (1981).

Appellant relies upon Bernard S. Storper, 60 IBLA 67 (1981), as authority for his position that serial certification is limited to the state where certification takes place. In Storper, however, there had been no filing of all the disclosure statements required by regulation, despite an apparent contention by appellant in that case that the filing had been accomplished in time. Thus, in Storper, there was no certification, and no incorporation by reference of a serial number assigned to the applicant by a BLM office accepting applicant's qualifications. Storper is not authority for the proposition argued by appellant that BLM serial certification is limited by state borders. This Board has held otherwise in R. Hugo C. Cotter, supra.

Sproul's erroneous response concerning his application, which indicates he failed to disclose the agency agreement used, while unexplained, was clearly erroneous in fact. It is apparent, as Sproul's application reveals, that he relied upon his agent to make the necessary filings with BLM in a matter where technical compliance with complex regulations is required. Those filings were made in fact. Whatever the explanation for Sproul's response to BLM, it does not change the fact that his application was in conformity to agency regulation when it was drawn. Since Sproul's was the first-drawn application, he is entitled to the lease.

Accordingly, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

C. Randall Grant, Jr.
Administrative Judge

Douglas E. Henriques
Administrative Judge

